IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

WP(C).No. 22060 of 2007(A)

OS.32/2006 of PRINCIPAL SUB COURT,KOCHI
.....

PETITIONER:

KURIAN JOSEPH,
S/O.JOSEPH, AGED 48 YEARS,
SUDHALAYAM, VALIYAVEETIL PUTHANANGADI,
(HOUSE NAME IS WRONGLY SHOWN IN THE CAUSE TITLE
AS 'VALIYAVEETIL' NJARAKKAL P.O., PIN 682 505.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENT:

K.D.RAJAGOPALAN,
AGED 45 YEARS, S/O.DAMODARAN,
KOMATH HOUSE, NEDUNGAD, NAYARAMBALAM- 682 509.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = =

W.P.C. NO. 22060 OF 2007

= = = = = = = = = = = = = = =

Dated this the 18th day of July, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside Ext.P3 order passed by the learned Sub Judge by extending the period of time for receipt of Court fee. As per Section 4A of the Court Fees Act the balance Court fee has to be paid within 15 days and the proviso provides power of the Court to extend the period to a maximum of 30 days from the date of framing of issues. So Section 4A as such would grant power to the Court to extend the time only up to 30 days but Section 149 of the CPC gives power to the Court for enlargement of time. The learned counsel for the writ petitioner has brought to my notice a decision of this Court reported in ***Mable v. Dolores (2001 (2) KLT 612***). It was a case where the Court below committed serious errors against the provisions of Section 4A of the Act. In stead of giving date for payment of Court fee within the stipulated period of 15 days the Court posted it from 13.1.95 to

17.2.95 thereby directly violating the Section and that had been condemned by this Court. The very same judgment makes it crystal clear that the power available u/s 149 of CPC would be still available for the Court to extend time.

2. According to the learned counsel for the writ petitioner, issues were framed by the Court on 21.7.06 and it is averred in paragraph 4 of the affidavit that the last date for payment of Court fee is 8.8.06. The Court ordered extension of time by three weeks up to 30.8.06. Since he could not pay it on 30.8.06 he moved an application subsequent to the payment of Court fee in 2007 for extending the time. So, even at the time of making application for extension of time really the Court fee had been paid. Most probably the fact appears to be that since three weeks granted had already expired on 30.8.06 and as the Court fee has been paid only on 1.9.06 and as there is no further extension by the Court to receive the Court fee, in

order to rectify the same an application has been filed to condone that delay also in making the payment of Court fee. The broader aspect of the case would reveal that there has not been indiscriminate delay in making payment of Court fee. Even if it is on 21.7.06, then 20.8.06 will be the last date and the Court fee admittedly is paid on 1.9.06. Interest of justice shall not be defeated by such technical reasons and the plaintiff should not be left without remedy in such types of cases. That is why S.149 CPC gives wider power to the Court to condone the delay.

3. Here, the real period that has to be condoned as per the impugned order is only 2 days and there has not been postponement of payment of Court fee for a period of one year but an application is filed with some delay and the Court fee is paid sufficiently earlier. I feel technicality shall not defeat the ends of justice and therefore the Court has correctly invoked the power u/s 149 CPC to extend the time

for making the deficit payment of Court fee. Just like in the Rent Control Act there is no dictum that extension can be made only once.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-